

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**
No. 3917 of 8 March, 2012

LEGAL NOTICE NO. 29 OF 2012.

INTERPRETATION AND GENERAL CLAUSES ACT

COMPANIES ACT (AMENDMENT) REGULATIONS 2012

In exercise of the powers conferred upon it by section 23(g)(ii) of the Interpretation and General Clauses Act, and all other enabling powers, and for the purpose of transposing into the law of Gibraltar Articles 1, 2 and 3 of Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009 amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Companies Act (Amendment) Regulations 2012 and come into operation on the day of publication.

Insertion of section 64A.

2. The Companies Act is amended by inserting the following section after section 64—

“Exception to valuation requirement: Merger and Division.

64A. The requirement for valuation of non-cash consideration does not apply to the allotment of shares by a company as part of a scheme to which sections 206A to 207Y of Part IVA apply if—

- (a) in the case of a scheme involving a merger, an expert’s report is drawn up as required by section 206H; or
- (b) in the case of a scheme involving a division, an expert’s report is drawn up as required by section 207F.”.

Amendment to section 65 of the Companies Act.

3. Section 65 of the Companies Act is amended by inserting the following subsections after subsection (6)–

“(7) Subsection (1) does not apply in the event of an increase in subscribed capital made in order to give effect to a merger, a division or a public offer for the purchase or exchange of shares and to pay the shareholders of the company which is being absorbed or divided or which is the object of the public offer for the purchase or exchange of shares.

(8) In the case of a merger or a division, subsection (7) shall be applied where an independent expert’s report on the draft terms of merger or division is drawn up.”.

Substitution of sections 205 to 208 of the Companies Act.

4. The Companies Act is amended by substituting the following new Part for sections 205 to 207–

**“PART IVA
Arrangements and reconstructions**

Application of sections 205A to 205F.

205.(1) The provisions of sections 205A to 205F apply where a compromise or arrangement is proposed between a company and–

- (a) its creditors, or any class of them; or
- (b) its members, or any class of them.

(2) In sections 205A to 205F–

“arrangement” includes a reorganisation of the company’s share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods; and

“company”–

- (a) in section 205E means a company within the meaning of this Act; and
 - (b) elsewhere in this Part means any company liable to be wound up under the Insolvency Act.
- (3) The provisions of sections 205A to 205F have effect subject to sections 206A to 207Y where those sections (sections 206A to 207Y) apply.

Meeting of creditors or members

Court order for holding of meeting.

205A.(1) The court may, on an application under this section, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, to be summoned in such manner as the court directs.

- (2) An application under this section may be made by—
- (a) the company;
 - (b) any creditor or member of the company;
 - (c) if the company is being wound up, the liquidator; or
 - (d) if the company is in administration, the administrator.

Statement to be circulated or made available.

205B.(1) Where a meeting is summoned under section 205A—

- (a) every notice summoning the meeting that is sent to a creditor or member must be accompanied by a statement complying with this section; and
- (b) every notice summoning the meeting that is given by advertisement must either—
 - (i) include such a statement; or

- (ii) state where and how creditors or members entitled to attend the meeting may obtain copies of such a statement.
- (2) The statement must–
 - (a) explain the effect of the compromise or arrangement; and
 - (b) in particular, state–
 - (i) any material interests of the directors of the company, whether as directors or as members or as creditors of the company or otherwise, and
 - (ii) the effect on those interests of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.
- (3) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement must give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.
- (4) Where a notice given by advertisement states that copies of an explanatory statement can be obtained by creditors or members entitled to attend the meeting, every such creditor or member is entitled, on making an application in the manner indicated by the notice, to be provided by the company with a copy of the statement free of charge.
- (5) Subject to subsection (7), if a company makes default in complying with any requirement of this section, an offence is committed by–
 - (a) the company; and
 - (b) every officer of the company who is in default.
- (6) For this purpose the following are treated as officers of the company–

- (a) a liquidator or administrator of the company; and
 - (b) a trustee of a deed for securing the issue of debentures of the company.
- (7) A person is not guilty of an offence under this section if he shows that the default was due to the refusal of a director or trustee for debenture holders to supply the necessary particulars of his interests.
- (8) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

Duty of directors and trustees to provide information.

205C.(1) It is the duty of—

- (a) any director of the company; and
- (b) any trustee for its debenture holders,

to give notice to the company of such matters relating to himself as may be necessary for the purposes of section 205B.

- (2) Any person who makes default in complying with this section commits an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Court sanction for compromise or arrangement

Court sanction for compromise or arrangement.

205D.(1) If a majority in number representing 75% in value of the—

- (a) creditors;

- (b) class of creditors;
- (c) members; or
- (d) class of members,

present and voting either in person or by proxy at the meeting summoned under section 205A, agree a compromise or arrangement, the court may, on an application under this section, sanction the compromise or arrangement.

(2) An application under this section may be made by—

- (a) the company;
- (b) any creditor or member of the company;
- (c) if the company is being wound up or an administration order is in force in relation to it, the liquidator or administrator; or
- (d) if the company is in administration, the administrator.

(3) A compromise or agreement sanctioned by the court is binding on—

- (a) all creditors or the class of creditors or on the members or class of members; and
- (b) the company or, in the case of a company in the course of being wound up, the liquidator and contributories of the company.

(4) The court's order has no effect until a copy of it has been delivered to the Registrar.

(5) A company in relation to which an order is made under this section must cause a copy of the order to be delivered to the Registrar within seven days after its making.

Reconstructions and amalgamations

Powers of court to facilitate reconstruction or amalgamation.

205E.(1) This section applies where application is made to the court under section 205D to sanction a compromise or arrangement and it is shown that—

- (a) the compromise or arrangement is proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies; and
 - (b) under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (“a transferor company”) is to be transferred to another company (“the transferee company”).
- (2) The court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters—
- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
 - (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
 - (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
 - (d) the dissolution, without winding up, of any transferor company;

- (e) the provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement;
 - (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.
- (3) If an order under this section provides for the transfer of property or liabilities—
- (a) the property is by virtue of the order transferred to, and vests in, the transferee company; and
 - (b) the liabilities are, by virtue of the order, transferred to and become liabilities of that company.
- (4) The property, if the order so directs, vests freed from any charge that is by virtue of the compromise or arrangement to cease to have effect.
- (5) In this section—
- “property” includes property, rights and powers of every description; and
- “liabilities” includes duties.
- (6) Every company in relation to which an order is made under this section must cause a copy of the order to be delivered to the Registrar within seven days after its making.
- (7) If default is made in complying with subsection (6) an offence is committed by—
- (a) the company; and
 - (b) every officer of the company who is in default.
- (8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the

standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

Obligations of company with respect to articles etc.

205F.(1) This section applies–

- (a) to any order for sanctioning compromise or arrangement under section 205D; and
- (b) to any order for facilitating reconstruction or amalgamation under section 205E that alters the company's constitution.

(2) If the order amends–

- (a) the company's articles; or
- (b) any resolution under section 12 or 19 or a resolution or agreement affecting a company's constitution,

the copy of the order delivered to the Registrar by the company under section 205D(4) or section 205E(6) must be accompanied by a copy of the company's articles, or the resolution or agreement in question, as amended.

(3) Every copy of the company's articles issued by the company after the order is made must be accompanied by a copy of the order, unless the effect of the order has been incorporated into the articles by amendment.

(4) In this section–

- (a) references to the effect of the order include the effect of the compromise or arrangement to which the order relates; and
- (b) in the case of a company not having articles, references to its articles shall be read as references to the instrument constituting the company or defining its constitution.

- (5) If a company makes default in complying with this section an offence is committed by—
- (a) the company; and
 - (b) every officer of the company who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Merger and Divisions of Public Companies

Application of sections 206A to 207Y.

206.(1) Sections 206A to 207Y apply where—

- (a) a compromise or arrangement is proposed between a public company, and—
 - (i) its creditors or any class of them, or
 - (ii) its members or any class of them,for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies;
- (b) the scheme involves—
 - (i) a merger within the meaning of section 206B, or
 - (ii) a division within the meaning of section 207, and
- (c) the consideration for the transfer, or each of the transfers, envisaged is to be shares in the transferee company, or one or more of the transferee companies, receivable by members of the transferor company, or transferor companies, with or without any cash payment to members.

(2) In sections 206A to 207Y—

- (a) a “new company” means a company formed for the purposes of, or in connection with, the scheme; and
 - (b) an “existing company” means a company other than one formed for the purposes of, or in connection with, the scheme.
- (3) Sections 206A to 207Y do not apply where the company in respect of which the compromise or arrangement is proposed is being wound up.

Relationship of sections 206A to 207Y to sections 205A to 205F.

- 206A.(1) The court must not sanction the compromise or arrangement under sections 205A to 205F unless the relevant requirements of sections 206A to 207Y have been complied with.
- (2) The requirements applicable to a merger are specified in sections 206C to 206O and some of those requirements, and certain general requirements of sections 205A to 205F, are modified or excluded by the provisions of sections 206P to 206T.
 - (3) The requirements applicable to a division are specified in sections 207A to 207M and some of those requirements, and certain general requirements of sections 205A to 205F are modified or excluded by the provisions of sections 207N to 207R.

Merger

Mergers and merging companies.

- 206B.(1) The scheme involves a merger where under the scheme—
- (a) the undertaking, property and liabilities of one or more public companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to another existing public company (a “merger by absorption”); or

- (b) the undertaking, property and liabilities of two or more public companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to a new company, whether or not a public company, (a “merger by formation of a new company”).
- (2) References in this Part to “the merging companies” are–
- (a) in relation to a merger by absorption, to the transferor and transferee companies;
 - (b) in relation to a merger by formation of a new company, to the transferor companies.

Requirements applicable to merger

Draft terms of scheme (merger).

206C.(1) A draft of the proposed terms of the scheme must be drawn up and adopted by the directors of the merging companies.

- (2) The draft terms must give particulars of at least the following matters–
- (a) in respect of each transferor company and the transferee company–
 - (i) its name,
 - (ii) the address of its registered office, and
 - (iii) whether it is a company limited by shares or a company limited by guarantee and having a share capital;
 - (b) the number of shares in the transferee company to be allotted to members of a transferor company for a given number of their shares (the “share exchange ratio”) and the amount of any cash payment;
 - (c) the terms relating to the allotment of shares in the transferee company;

- (d) the date from which the holding of shares in the transferee company will entitle the holders to participate in profits, and any special conditions affecting that entitlement;
- (e) the date from which the transactions of a transferor company are to be treated for accounting purposes as being those of the transferee company;
- (f) any rights or restrictions attaching to shares or other securities in the transferee company to be allotted under the scheme to the holders of shares or other securities in a transferor company to which any special rights or restrictions attach, or the measures proposed concerning them;
- (g) any amount of benefit paid or given or intended to be paid or given—
 - (i) to any of the experts referred to in section 206H (expert's report), or
 - (ii) to any director of a merging company,

and the consideration for the payment of benefit.

- (3) The requirements in subsection (2)(b), (c) and (d) are subject to the circumstances in which certain particulars not required under section 206P.

Publication of draft terms (merger) by Registrar.

- 206D.(1) The directors of each of the merging companies must deliver a copy of the draft terms to the Registrar.
- (2) The Registrar must publish in the Gazette notice of receipt by him from that company of a copy of the draft terms.
 - (3) That notice must be published at least one month before the date of any meeting of that company summoned for the purpose of approving the scheme.

- (4) The requirements in this section are subject to section 206E.

Publication of draft terms on company website (merger).

206E.(1) Section 206D does not apply in respect of a company if the conditions in subsections (2) to (6) are met.

- (2) The first condition is that the draft terms are made available on a website which—
- (a) is maintained by or on behalf of the company; and
 - (b) identifies the company.
- (3) The second condition is that neither access to the draft terms on the website nor the supply of a hard copy of them from the website is conditional on payment of a fee or otherwise restricted.
- (4) The third condition is that the directors of the company deliver to the Registrar a notice giving details of the website on payment of such fee as the Registrar shall prescribe.
- (5) The fourth condition is that the Registrar publishes the notice giving details of the website in the Gazette at least one month before the date of any meeting of the company summoned for the purpose of approving the scheme.
- (6) The fifth condition is that the draft terms are made available on the website throughout the period beginning one month before the date of any such meeting and remain available until the conclusion of that meeting.

Approval of members of merging companies.

206F.(1) The scheme must be approved by a majority in number, representing 75% in value, of each class of members of each of the merging companies, present and voting either in person or by proxy at a meeting.

- (2) This requirement is subject to the circumstances in which meetings of members not required pursuant to sections 206R, 206S and 206T.

Directors' explanatory report (merger).

206G.(1) The directors of each of the merging companies must draw up and adopt a report.

- (2) The report must consist of—
 - (a) the statement required by section 205B; and
 - (b) insofar as that statement does not deal with the following matters, a further statement—
 - (i) setting out the legal and economic grounds for the draft terms, and in particular for the share exchange ratio, and
 - (ii) specifying any special valuation difficulties.
- (3) The requirement in this section is subject to the circumstance under sections 206P, 206Q and 206U.

Expert's report (merger).

206H.(1) An expert's report must be drawn up on behalf of each of the merging companies.

- (2) The report required is a written report on the draft terms to the members of the company.
- (3) The court may on the joint application of all the merging companies approve the appointment of a joint expert to draw up a single report on behalf of all those companies and if no such appointment is made, there must be a separate expert's report to the members of each merging company drawn up by a separate expert appointed on behalf of that company.
- (4) The expert must be a person who—
 - (a) is eligible for appointment as an auditor under section 180(2); and
 - (b) meets the independence requirement in section 207T.

- (5) The expert's report must—
- (a) indicate the method or methods used to arrive at the share exchange ratio;
 - (b) give an opinion as to whether the method or methods used are reasonable in all the circumstances of the case, indicate the values arrived at using each such method and, if there is more than one method, give an opinion on the relative importance attributed to such methods in arriving at the value decided on;
 - (c) describe any special valuation difficulties that have arisen;
 - (d) state whether in the expert's opinion the share exchange ratio is reasonable; and
 - (e) in the case of a valuation made by a person other than himself, pursuant to section 207S, state that it appeared to him reasonable to arrange for it to be so made or to accept a valuation so made.
- (6) The expert, or each of them, has—
- (a) the right of access to all such documents of all the merging companies; and
 - (b) the right to require from the companies' officers all such information,

as he thinks necessary for the purposes of making his report.

- (7) The requirement in this section is subject to the circumstances under sections 206P and 206Q.

Supplementary accounting statement (merger).

206I.(1) This section applies if the last annual accounts of any of the merging companies relate to a financial year ending before—

- (a) the date seven months before the first meeting of the company summoned for the purposes of approving the scheme; or
 - (b) if no meeting of the company is required, by virtue of any of sections 206R to 206T, the date six months before the directors of the company adopt the draft terms of the scheme.
- (2) If the company has not made public a half-yearly financial report relating to a period ending on or after the date mentioned in subsection (1), the directors of the company must prepare a supplementary accounting statement.
- (3) That statement must consist of–
 - (a) a balance sheet dealing with the state of affairs of the company as at a date not more than three months before the draft terms were adopted by the directors; and
 - (b) where the company would be required under section 7 of the Companies (Consolidated Accounts) Act, 1999 to prepare group accounts if that date were the last day of a financial year, a consolidated balance sheet dealing with the state of affairs of the company and the undertakings that would be included in such a consolidation.
- (4) The requirements of this Act, and where relevant Article 4 of the IAS Regulation, as to the balance sheet forming part of a company's annual accounts, and the matters to be included in notes to it, apply to the balance sheet required for an accounting statement under this section, with such modifications as are necessary by reason of its being prepared otherwise than as at the last day of a financial year.
- (5) The provisions of section 177 of the Companies Act shall apply as to the signing of the balance sheet required for an accounting statement under this section.
- (6) In this section “half-yearly financial report” means a report of that description required to be made public by rules under

section 11 of the Financial Services (Listing of Securities) Act 2006.

- (7) The requirement in this section is subject to sections 206Q and 206U.
- (8) In this section, "IAS Regulation" means EC Regulation No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards as amended or replaced by another EC Regulation.

Inspection of documents (merger).

206J.(1) The members of each of the merging companies must be able, during the period specified below—

- (a) to inspect at the registered office of that company copies of the documents listed below relating to that company and every other merging company; and
- (b) to obtain copies of those documents or any part of them on request free of charge.

(2) The period referred to above is the period—

- (a) beginning one month before; and
- (b) ending on the date of,

the first meeting of the members, or any class of members, of the company for the purposes of approving the scheme.

(3) The documents referred to above are—

- (a) the draft terms;
- (b) the directors' explanatory report;
- (c) the expert's report;
- (d) the company's annual accounts and reports for the last three financial years ending on or before the first meeting of the members, or any class of members, of

the company summoned for the purposes of approving the scheme;

- (e) any supplementary accounting statement required by section 206I; and
 - (f) if no statement is required by section 206I because the company has made public a recent half-yearly financial report pursuant to subsection 2 of that section, that report.
- (4) The requirement in subsection (1)(a) is subject to section 206K(1) in respect of publication of documents on company website.
- (5) Where a member who has consented to information being sent or supplied by the company by electronic means to him and he has not revoked that consent, there is no need to send him a hard copy of such document.
- (6) The requirements in this section are subject to sections 206Q and 206U.

Publication of documents on company website (merger).

206K.(1) Subject to subsection (6), section 206J(1)(a) does not apply to a document if the conditions in subsections (2) to (4) are met in relation to that document.

- (2) The first condition is that the document is made available on a website which—
- (a) is maintained by or on behalf of the company; and
 - (b) identifies the company.
- (3) The second condition is that access to the document on the website is not conditional on payment of a fee or otherwise restricted.
- (4) The third condition is that the document remains available on the website throughout the period beginning one month before the date of any meeting of the company summoned for the

purpose of approving the scheme and remains available until the conclusion of that meeting.

- (5) A person is able to obtain a copy of a document as required by section 206J(1)(b) if—
- (a) the conditions in subsections (2) and (3) are met in relation to that document; and
 - (b) the person is able, throughout the period specified in subsection (4)—
 - (i) to retain a copy of the document as made available on the website, and
 - (ii) to produce a hard copy of it.
- (6) Where members of a company are able to obtain copies of a document only as mentioned in subsection (5), section 206J(1)(a) applies to that document even if the conditions in subsections (2) to (4) are met.

Report on material changes of assets of merging companies.

206L.(1) The directors of each of the merging companies must report—

- (a) to every meeting of the members, or any class of members, of that company summoned for the purpose of agreeing to the scheme; and
- (b) to the directors of every other merging company,

any material changes in the property and liabilities of that company between the date when the draft terms were adopted and the date of the meeting in question.

- (2) The directors of each of the other merging companies must in turn—
- (a) report those matters to every meeting of the members, or any class of members, of that company summoned for the purpose of agreeing to the scheme; or

- (b) send a report of those matters to every member entitled to receive notice of such a meeting.
- (3) The requirement in this section is subject to sections 206Q and 206U.

Approval of articles of new transferee company (merger).

206M. In the case of a merger by formation of a new company, the articles of the transferee company, or a draft of them, must be approved by ordinary resolution of each of the transferor companies.

Protection of holders of securities to which special rights attached (merger).

206N.(1) The scheme must provide that where any securities of a transferor company (other than shares) to which special rights are attached are held by a person otherwise than as a member or creditor of the company, that person is to receive rights in the transferee company of equivalent value.

- (2) Subsection (1) does not apply if—
 - (a) the holder has agreed otherwise; or
 - (b) the holder is, or under the scheme is to be, entitled to have the securities purchased by the transferee company on terms that the court considers reasonable.

No allotment of shares to transferor company or its nominee (merger).

206O. The scheme must not provide for any shares in the transferee company to be allotted to a transferor company, or its nominee, in respect of shares in the transferor company held by the transferor company itself, or its nominee.

Exceptions where shares of transferor company held by transferee company

Circumstances in which certain particulars and reports not required (merger).

206P.(1) This section applies in the case of a merger by absorption where all of the relevant securities of the transferor company, or, if there is more than one transferor company, of each of them, are held by or on behalf of the transferee company.

- (2) The draft terms of the scheme need not give the particulars relating to allotment of shares to members of the transferor company mentioned in section 206C(2)(b), (c) or (d).
- (3) Section 205B does not apply.
- (4) The requirements of the following sections do not apply—
 - (a) section 206G; and
 - (b) section 206H.
- (5) The requirements of section 206J so far as relating to any document required to be drawn up under the provisions mentioned in subsection (4) do not apply.
- (6) In this section “relevant securities”, in relation to a company, means shares or other securities carrying the right to vote at general meetings of the company.

Other circumstances in which reports and inspection not required (merger).

206Q.(1) This section applies in the case of a merger by absorption where 90% or more, but not all, of the relevant securities of the transferor company, or, if there is more than one transferor company, of each of them, are held by or on behalf of the transferee company.

- (2) If the conditions in subsections (3) and (4) are met, the requirements of the following sections do not apply—
- (a) section 206G;
 - (b) section 206H;
 - (c) section 206I;
 - (d) section 206J; and
 - (e) section 206L.
- (3) The first condition is that the scheme provides that every other holder of relevant securities has the right to require the transferee company to acquire those securities.
- (4) The second condition is that, if a holder of securities exercises that right, the consideration to be given for those securities is fair and reasonable.
- (5) The powers of the court under section 2005E(2) include the power to determine, or make provision for the determination of, the consideration to be given for securities acquired under this section.

- (6) In this section—

“other holder” means a person who holds securities of the transferor company otherwise than on behalf of the transferee company and does not include the transferee company itself;

“relevant securities”, in relation to a company, means shares or other securities carrying the right to vote at general meetings of the company.

Circumstances in which meeting of members of transferee company not required (merger).

206R.(1) This section applies in the case of a merger by absorption where 90% or more, but not all, of the relevant securities of the transferor company or, if there is more than one transferor

company, of each of them, are held by or on behalf of the transferee company.

- (2) It is not necessary for the scheme to be approved at a meeting of the members, or any class of members, of the transferee company if the court is satisfied that the following conditions have been complied with.
- (3) The first condition is that either subsection (4) or subsection (5) is satisfied.
- (4) This subsection is satisfied if publication of notice of receipt of the draft terms by the Registrar took place in respect of the transferee company at least one month before the date of the first meeting of members, or any class of members, of the transferor company summoned for the purpose of agreeing to the scheme.
- (5) This subsection is satisfied if—
 - (a) the conditions in section 206E(2) to (4) are met in respect of the transferee company;
 - (b) the Registrar published the notice mentioned in subsection (4) of that section in the Gazette at least one month before the date of the first meeting of members, or any class of members, of the transferor company summoned for the purpose of agreeing to the scheme; and
 - (c) the draft terms remained available on the website throughout the period beginning one month before that date and remained available until the conclusion of that meeting.
- (6) The second condition is that subsection (7) or (8) is satisfied for each of the documents listed in the applicable paragraphs of section 206J(3)(a) to (f) relating to the transferee company and the transferor company or, if there is more than one transferor company, each of them.
- (7) This subsection is satisfied for a document if the members of the transferee company were able during the period beginning

one month before, and ending on, the date mentioned in subsection (4) to inspect that document at the registered office of that company.

- (8) This subsection is satisfied for a document if–
- (a) the document is made available on a website which is maintained by or on behalf of the transferee company and identifies the company;
 - (b) access to the document on the website is not conditional on the payment of a fee or otherwise restricted; and
 - (c) the document remains available on the website throughout the period beginning one month before, and ending on, the date mentioned in subsection (4).
- (9) The third condition is that the members of the transferee company were able to obtain copies of the documents mentioned in subsection (4), or any part of those documents, on request and free of charge, throughout the period beginning one month before the date mentioned in subsection (4) and remains free of charge until the conclusion of the meeting referred to in that subsection.
- (10) For the purposes of subsection (9), section 206K(5) applies as it applies for the purposes of section 206J(1)(b).
- (11) The fourth condition is that–
- (a) one or more members of the transferee company, who together held not less than 5% of the paid-up capital of the company which carried the right to vote at general meetings of the company, excluding any shares in the company held as treasury shares, would have been able, during that period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme; and
 - (b) no such requirement was made.

- (12) In this section “relevant securities”, in relation to a company, means shares or other securities carrying the right to vote at general meetings of the company.

Circumstances in which no meetings required (merger).

206S.(1) This section applies in the case of a merger by absorption where all of the relevant securities of the transferor company, or, if there is more than one transferor company, of each of them, are held by or on behalf of the transferee company.

- (2) It is not necessary for the scheme to be approved at a meeting of the members, or any class of members, of any of the merging companies if the court is satisfied that the following conditions have been complied with.
- (3) The first condition is that either subsection (4) or subsection (5) is satisfied.
- (4) This subsection is satisfied if publication of notice of receipt of the draft terms by the Registrar took place in respect of all the merging companies at least one month before the date of the court’s order.
- (5) This subsection is satisfied if—
- (a) the conditions in section 206E(2) to (4) are met in respect of each of the merging companies;
 - (b) in each case, the Registrar published the notice mentioned in subsection (4) of that section in the Gazette at least one month before the date of the court’s order; and
 - (c) the draft terms remained available on the website throughout the period beginning one month before, and ending on, that date.
- (6) The second condition is that subsection (7) or (8) is satisfied for each of the documents listed in the applicable paragraphs of section 206J(3)(a) to (f) relating to the transferee company and the transferor company, or, if there is more than one transferor company, each of them.

- (7) This subsection is satisfied for a document if the members of the transferee company were able during the period beginning one month before, and ending on, the date mentioned in subsection (4) to inspect that document at the registered office of that company.
- (8) This subsection is satisfied for a document if—
 - (a) the document is made available on a website which is maintained by or on behalf of the transferee company and identifies the company;
 - (b) access to the document on the website is not conditional on the payment of a fee or otherwise restricted; and
 - (c) the document remains available on the website throughout the period beginning one month before the date mentioned in subsection (4) and remains available until the conclusion of that meeting.
- (9) The third condition is that the members of the transferee company were able to obtain copies of the documents mentioned in subsection (4), or any part of those documents, on request and free of charge, throughout the period beginning one month before the date mentioned in subsection (4) and remains free of charge until the conclusion of the meeting referred to in that subsection.
- (10) For the purposes of subsection (9) section 206K(5) applies as it applies for the purposes of section 206J(1)(b).
- (11) The fourth condition is that—
 - (a) one or more members of the transferee company, who together held not less than 5% of the paid-up capital of the company which carried the right to vote at general meetings of the company, excluding any shares in the company held as treasury shares, would have been able, during that period, to require a meeting of each class of members to be called for the

purpose of deciding whether or not to agree to the scheme; and

(b) no such requirement was made.

(13) In this section “relevant securities”, in relation to a company, means shares or other securities carrying the right to vote at general meetings of the company.

Other exceptions

Other circumstances in which meeting of members of transferee company not required (merger).

206T.(1) In the case of any merger by absorption, it is not necessary for the scheme to be approved by the members of the transferee company if the court is satisfied that the following conditions have been complied with.

(2) The first condition is that either subsection (3) or subsection (4) is satisfied.

(3) This subsection is satisfied if publication of notice of receipt of the draft terms by the Registrar took place in respect of the transferee company at least one month before the date of the first meeting of members, or any class of members, of the transferor company, or, if there is more than one transferor company, any of them, summoned for the purposes of agreeing to the scheme.

(4) This subsection is satisfied if—

(a) the conditions in section 206E(2) to (4) are met in respect of the transferee company,

(b) the Registrar published the notice mentioned in subsection (4) of that section in the Gazette at least one month before the date of the first meeting of members, or any class of members, of the transferor company, or, if there is more than one transferor company, any of them, summoned for the purposes of agreeing to the scheme, and

- (c) the draft terms remained available on the website throughout the period beginning one month before, and ending on, that date.
- (5) The second condition is that subsection (6) or (7) is satisfied for each of the documents listed in the applicable paragraphs of section 206(3) relating to the transferee company and the transferor company, or, if there is more than one transferor company, each of them.
- (6) This subsection is satisfied for a document if the members of the transferee company were able during the period beginning one month before, and ending on, the date of any such meeting as is mentioned in subsection (3) to inspect that document at the registered office of that company.
- (7) This subsection is satisfied for a document if—
 - (a) the document is made available on a website which is maintained by or on behalf of the transferee company and identifies the company;
 - (b) access to the document on the website is not conditional on the payment of a fee or otherwise restricted; and
 - (c) the document remains available on the website throughout the period beginning one month before the date of any such meeting as is mentioned in subsection (3) and remains available until the conclusion of that meeting.
- (8) The third condition is that the members of the transferee company were able to obtain copies of the documents mentioned in subsection (5), or any part of those documents, on request and free of charge, throughout the period beginning one month before the date of any such meeting as is mentioned in subsection (3) and thereafter until the conclusion of that meeting.
- (9) For the purposes of subsection (8) section 206K(5) applies as it applies for the purposes of section 206J(1)(b).

- (10) The fourth condition is that—
- (a) one or more members of that company, who together held not less than 5% of the paid-up capital of the company which carried the right to vote at general meetings of the company, excluding any shares in the company held as treasury shares, would have been able, during that period, to require a meeting of each class of members to be called for the purpose of deciding whether or not to agree to the scheme; and
 - (b) no such requirement was made.
- (11) For the purposes of sub-section (10) members holding 5% or more shall be entitled to request the directors to call a meeting irrespective of section 159(1).

Agreement to dispense with report, etc (merger).

206U.(1) If all members holding shares in, and all persons holding other securities of, the merging companies, being shares or securities that carry a right to vote in general meetings of the company in question, so agree, the requirements referred to in subsection (2) do not apply.

- (2) The requirements that may be dispensed with under this section are—
- (a) the requirements of—
 - (i) section 206G,
 - (ii) section 206H,
 - (iii) section 206I , and
 - (iv) section 206L; and
 - (b) the requirements of section 206J so far as relating to any document required to be drawn up under sections 206G, 206H or 206I.

- (3) For the purposes of this section—
- (a) the members, or holders of other securities, of a company; and
 - (b) whether shares or other securities carry a right to vote in general meetings of the company,

are determined as at the date of the application to the court under section 205A.

Division

Divisions and companies involved in a division.

- 207.(1) The scheme involves a division where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement is proposed are to be divided among and transferred to two or more companies each of which is either—
- (a) an existing public company; or
 - (b) a new company, whether or not a public company.
- (2) References in this Part to the companies involved in the division are to the transferor company and any existing transferee companies.

Requirements to be complied with in case of division

Draft terms of scheme (division).

- 207A.(1) A draft of the proposed terms of the scheme must be drawn up and adopted by the directors of each of the companies involved in the division.
- (2) The draft terms must give particulars of at least the following matters—
- (a) in respect of the transferor company and each transferee company—

- (i) its name,
 - (ii) the address of its registered office, and
 - (iii) whether it is a company limited by shares or a company limited by guarantee and having a share capital;
- (b) the number of shares in a transferee company to be allotted to members of the transferor company for a given number of their shares (the “share exchange ratio”) and the amount of any cash payment;
 - (c) the terms relating to the allotment of shares in a transferee company;
 - (d) the date from which the holding of shares in a transferee company will entitle the holders to participate in profits, and any special conditions affecting that entitlement;
 - (e) the date from which the transactions of the transferor company are to be treated for accounting purposes as being those of a transferee company;
 - (f) any rights or restrictions attaching to shares or other securities in a transferee company to be allotted under the scheme to the holders of shares or other securities in the transferor company to which any special rights or restrictions attach, or the measures proposed concerning them;
 - (g) any amount of benefit paid or given or intended to be paid or given—
 - (i) to any of the experts referred to in section 207F, or
 - (ii) to any director of a company involved in the division,

and the consideration for the payment of benefit.

- (3) The draft terms must also–
 - (a) give particulars of the property and liabilities to be transferred, to the extent that these are known to the transferor company, and their allocation among the transferee companies;
 - (b) make provision for the allocation among and transfer to the transferee companies of any other property and liabilities that the transferor company has acquired or may subsequently acquire; and
 - (c) specify the allocation to members of the transferor company of shares in the transferee companies and the criteria upon which that allocation is based.

Publication of draft terms by Registrar (division).

- 207B.(1) The directors of each company involved in the division must deliver a copy of the draft terms to the Registrar.
- (2) The Registrar must publish in the Gazette notice of receipt by him from that company of a copy of the draft terms.
 - (3) That notice must be published at least one month before the date of any meeting of that company summoned for the purposes of approving the scheme.
 - (4) The requirements in this section for publication of draft terms on company website are subject to section 207C and the power of court to exclude certain requirements is subject to section 207R.

Publication of draft terms on company website (division).

- 207C(1) Section 207B does not apply in respect of a company if the conditions in subsections (2) to (6) are met.
- (2) The first condition is that the draft terms are made available on a website which–
 - (a) is maintained by or on behalf of the company; and

- (b) identifies the company.
- (3) The second condition is that neither access to the draft terms on the website nor the supply of a hard copy of them from the website is conditional on payment of a fee or otherwise restricted.
- (4) The third condition is that the directors of the company deliver to the Registrar a notice giving details of the website.
- (5) The fourth condition is that the Registrar publishes the notice in the Gazette at least one month before the date of any meeting of the company summoned for the purpose of approving the scheme.
- (6) The fifth condition is that the draft terms remain available on the website throughout the period beginning one month before the date of any such meeting and remain available until the conclusion of that meeting.

Approval of members of companies involved in the division.

207D.(1) The compromise or arrangement must be approved by a majority in number, representing 75% in value, of each class of members of each of the companies involved in the division, present and voting either in person or by proxy at a meeting.

- (2) This requirement is subject to sections 207N and 207O.

Directors' explanatory report (division).

207E.(1) The directors of the transferor and each existing transferee company must draw up and adopt a report.

- (2) The report must consist of—
 - (a) the statement required by section 205B (statement explaining effect of compromise or arrangement); and
 - (b) insofar as that statement does not deal with the following matters, a further statement—

- (i) setting out the legal and economic grounds for the draft terms, and in particular for the share exchange ratio and for the criteria on which the allocation to the members of the transferor company of shares in the transferee companies was based, and
 - (ii) specifying any special valuation difficulties.
- (3) The report must also state–
- (a) whether a report on the valuation of non-cash consideration for shares has been made to any transferee company under section 64; and
 - (b) if so, whether that report has been delivered to the Registrar.
- (4) The requirement in this section is subject to section 207P and section 207Q.

Expert's report (division).

207F.(1) An expert's report must be drawn up on behalf of each company involved in the division.

- (2) The report required is a written report on the draft terms to the members of the company.
- (3) The court may on the joint application of the companies involved in the division approve the appointment of a joint expert to draw up a single report on behalf of all those companies and if no such appointment is made, there must be a separate expert's report to the members of each company involved in the division drawn up by a separate expert appointed on behalf of that company.
- (4) The expert must be a person who–
 - (a) is eligible for appointment as an auditor under section 180; and
 - (b) meets the independence requirement in section 207T.

- (5) The expert's report must—
- (a) indicate the method or methods used to arrive at the share exchange ratio;
 - (b) give an opinion as to whether the method or methods used are reasonable in all the circumstances of the case, indicate the values arrived at using each such method and, if there is more than one method, give an opinion on the relative importance attributed to such methods in arriving at the value decided on;
 - (c) describe any special valuation difficulties that have arisen;
 - (d) state whether in the expert's opinion the share exchange ratio is reasonable; and
 - (e) in the case of a valuation made by a person other than himself pursuant to section 207S, state that it appeared to him reasonable to arrange for it to be so made or to accept a valuation so made.
- (6) The expert, or each of them, has—
- (a) the right of access to all such documents of the companies involved in the division; and
 - (b) the right to require from the companies' officers all such information,

as he thinks necessary for the purposes of making his report.

- (7) The requirement in this section is subject to section 207P and section 207Q.

Supplementary accounting statement (division).

207G.(1) This section applies if the last annual accounts of a company involved in the division relate to a financial year ending before—

- (a) the date seven months before the first meeting of the company summoned for the purposes of approving the scheme; or
 - (b) if no meeting of the company is required, by virtue of section 207N or 207O, the date six months before the directors of the company adopt the draft terms of the scheme.
- (2) If the company has not made public a half-yearly financial report relating to a period ending on or after the date mentioned in subsection (1), the directors of the company must prepare a supplementary accounting statement.
- (3) That statement must consist of—
 - (a) a balance sheet dealing with the state of affairs of the company as at a date not more than three months before the draft terms were adopted by the directors; and
 - (b) where the company would be required under section 7 of the Companies (Consolidated Accounts) Act, 1999 to prepare group accounts if that date were the last day of a financial year, a consolidated balance sheet dealing with the state of affairs of the company and the undertakings that would be included in such a consolidation.
- (4) The requirements of this Act, and where relevant Article 4 of the IAS Regulation, as to the balance sheet forming part of a company's annual accounts, and the matters to be included in notes to it, apply to the balance sheet required for an accounting statement under this section, with such modifications as are necessary by reason of its being prepared otherwise than as at the last day of a financial year.
- (5) The provisions of section 177 of the Companies Act shall apply as to the signing of the balance sheet required for an accounting statement under this section.
- (6) In this section “half-yearly financial report” means a report of that description required to be made public by rules under

section 11 of the Financial Services (Listing of Securities) Act 2006.

- (7) The requirement in this section is subject to section 207P and section 207Q .
- (8) In this section, "IAS Regulation" means EC Regulation No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards as amended or replaced by another EC Regulation.

Inspection of documents (division).

207H.(1) The members of each company involved in the division must be able, during the period specified below–

- (a) to inspect at the registered office of that company copies of the documents listed below relating to that company and every other company involved in the division; and
- (b) to obtain copies of those documents or any part of them on request free of charge.

(2) The period referred to above is the period–

- (a) beginning one month before; and
- (b) ending on the date of,

the first meeting of the members, or any class of members, of the company for the purposes of approving the scheme.

(3) The documents referred to above are–

- (a) the draft terms;
- (b) the directors' explanatory report;
- (c) the expert's report;
- (d) the company's annual accounts and reports for the last three financial years ending on or before the first

meeting of the members, or any class of members, of the company summoned for the purposes of approving the scheme;

- (e) any supplementary accounting statement required by section 207G; and
 - (f) if no statement is required by section 207G because the company has made public a recent half-yearly financial report under subsection (2) of that section, that report.
- (4) The requirement in subsection (1)(a) is subject to the requirement of publication of documents on company website pursuant to section 207I(1).
 - (5) The requirements in subsection (3)(b), (c) and (e) are subject to sections 207P, 207R and 207Q.
 - (6) Where a member who has consented to information being sent to him or supplied by the company by electronic means and he has not revoked that consent, the hard copy of such document need not to be sent to him.

Publication of documents on company website (division).

207I.(1) Subject to subsection (6), section 207H(1)(a) does not apply to a document if the conditions in subsections (2) to (4) are met in relation to that document.

- (2) The first condition is that the document is made available on a website which—
 - (a) is maintained by or on behalf of the company; and
 - (b) identifies the company.
- (3) The second condition is that access to the document on the website is not conditional on payment of a fee or otherwise restricted.
- (4) The third condition is that the document remains available on the website throughout the period beginning one month

before the date of any meeting of the company summoned for the purpose of approving the scheme and remains so available until the conclusion of that meeting.

- (5) A person is able to obtain a copy of a document as required by section 207H(1)(b) if—
- (a) the conditions in subsections (2) and (3) are met in relation to that document; and
 - (b) the person is able, throughout the period specified in subsection (4)—
 - (i) to retain a copy of the document as made available on the website, and
 - (ii) to produce a hard copy of it.
- (6) Where members of a company are able to obtain copies of a document only as mentioned in subsection (5), section 207H(1)(a) applies to that document even if the conditions in subsections (2) to (4) are met.

Report on material changes of assets of transferor company (division).

207J.(1) The directors of the transferor company must report—

- (a) to every meeting of the members, or any class of members, of that company summoned for the purpose of agreeing to the scheme; and
 - (b) to the directors of each existing transferee company, any material changes in the property and liabilities of the transferor company between the date when the draft terms were adopted and the date of the meeting in question.
- (2) The directors of each existing transferee company must in turn—

- (a) report those matters to every meeting of the members, or any class of members, of that company summoned for the purpose of agreeing to the scheme; or
 - (b) send a report of those matters to every member entitled to receive notice of such a meeting.
- (3) The requirement in this section is subject to section 207P and section 207Q.

Approval of articles of new transferee company (division).

207K. The articles of every new transferee company, or a draft of them, must be approved by ordinary resolution of the transferor company.

Protection of holders of securities to which special rights attached (division) .

207L.(1) The scheme must provide that where any securities of the transferor company, other than shares, to which special rights are attached are held by a person otherwise than as a member or creditor of the company, that person is to receive rights in a transferee company of equivalent value.

(2) Subsection (1) does not apply if–

- (a) the holder has agreed otherwise; or
- (b) the holder is, or under the scheme is to be, entitled to have the securities purchased by a transferee company on terms that the court considers reasonable.

No allotment of shares to transferor company or its nominee (division).

207M. The scheme must not provide for any shares in a transferee company to be allotted to–

- (a) the transferor company, or its nominee, in respect of shares in the transferor company held by the transferor company itself or its nominee; or

- (b) a transferee company, or its nominee, in respect of shares in the transferor company held by the transferee company, or its nominee.

Exceptions where shares of transferor company held by transferee company

Circumstances in which meeting of members of transferor company not required (division).

207N.(1) This section applies in the case of a division where all of the shares or other securities of the transferor company carrying the right to vote at general meetings of the company are held by or on behalf of one or more existing transferee companies.

- (2) It is not necessary for the scheme to be approved by a meeting of the members, or any class of members, of the transferor company if the court is satisfied that the following conditions have been complied with.
- (3) The first condition is that either subsection (4) or subsection (5) is satisfied.
- (4) This subsection is satisfied if publication of notice of receipt of the draft terms by the Registrar took place in respect of all the companies involved in the division at least one month before the date of the court's order.
- (5) This subsection is satisfied if—
 - (a) the conditions in section 207C(2) to (4) are met in respect of each of the companies involved in the division;
 - (b) in each case, the Registrar published the notice mentioned in subsection (4) of that section in the Gazette at least one month before the date of the court's order; and
 - (c) the draft terms remained available on the website throughout the period beginning one month before, and ending on, that date.

- (6) The second condition is that subsection (7) or (8) is satisfied for each of the documents listed in the applicable paragraphs of section 207H(3) relating to every company involved in the division.
- (7) This subsection is satisfied for a document if the members of every company involved in the division were able during the period beginning one month before, and ending on, the date of the court's order to inspect that document at the registered office of their company.
- (8) This subsection is satisfied for a document if—
 - (a) the document is made available on a website which is maintained by or on behalf of the company to which it relates and identifies the company;
 - (b) access to the document on the website is not conditional on payment of a fee or otherwise restricted; and
 - (c) the document remains available on the website throughout the period beginning one month before, and ending on, the date of the court's order.
- (9) The third condition is that the members of every company involved in the division were able to obtain copies of the documents mentioned in subsection (6), or any part of those documents, on request and free of charge, throughout the period beginning one month before, and ending on, the date of the court's order.
- (10) For the purposes of subsection (9) section 207I (5) applies as it applies for the purposes of section 207H(1)(b).
- (11) The fourth condition is that the directors of the transferor company have sent—
 - (a) to every member who would have been entitled to receive notice of a meeting to agree to the scheme (had any such meeting been called); and
 - (b) to the directors of every existing transferee company,

a report of any material change in the property and liabilities of the transferor company between the date when the terms were adopted by the directors and the date one month before the date of the court's order.

Other exceptions

Circumstances in which meeting of members of transferee company not required (division).

207O.(1) In the case of a division, it is not necessary for the scheme to be approved by the members of a transferee company if the court is satisfied that the following conditions have been complied with in relation to that company.

- (2) The first condition is that either subsection (3) or subsection (4) is satisfied.
- (3) This subsection is satisfied if publication of notice of receipt of the draft terms by the Registrar took place in respect of the transferee company at least one month before the date of the first meeting of members of the transferor company summoned for the purposes of agreeing to the scheme.
- (4) This subsection is satisfied if—
 - (a) the conditions in section 207C(2) to (4) are met in respect of the transferee company;
 - (b) the Registrar published the notice mentioned in subsection (4) of that section in the Gazette at least one month before the date of the first meeting of members of the transferor company summoned for the purposes of agreeing to the scheme; and
 - (c) the draft terms remained available on the website throughout the period beginning one month before the date of such meeting and remains available until the conclusion of that meeting.
- (5) The second condition is that subsection (6) or (7) is satisfied for each of the documents listed in the applicable paragraphs

of section 207H (3) relating to the transferee company and every other company involved in the division.

- (6) This subsection is satisfied for a document if the members of the transferee company were able during the period beginning one month before, and ending on, the date mentioned in subsection (3) to inspect that document at the registered office of that company.
- (7) This subsection is satisfied for a document if—
 - (a) the document is made available on a website which is maintained by or on behalf of the transferee company and identifies the company;
 - (b) access to the document on the website is not conditional on payment of a fee or otherwise restricted; and
 - (c) the document remains available on the website throughout the period beginning one month before, and ending on, the date mentioned in subsection (3).
- (8) The third condition is that the members of the transferee company were able to obtain copies of the documents mentioned in subsection (5), or any part of those documents, on request and free of charge, throughout the period beginning one month before the date mentioned in subsection (3) and remains free of charge until the conclusion of the meeting referred to in that subsection.
- (9) For the purposes of subsection (8) section 207I(5) applies as it applies for the purposes of section 207H(1)(b).
- (10) The fourth condition is that—
 - (a) one or more members of that company, who together held not less than 5% of the paid-up capital of the company which carried the right to vote at general meetings of the company, excluding any shares in the company held as treasury shares, would have been able, during that period, to require a meeting of each

class of members to be called for the purpose of deciding whether or not to agree to the scheme; and

(b) no such requirement was made.

(11) The first, second and third conditions above are subject to section 207R.

Agreement to dispense with reports etc (division).

207P.(1) If all members holding shares in, and all persons holding other securities of, the companies involved in the division, being shares or securities that carry a right to vote in general meetings of the company in question, so agree, the requirements referred to in subsection (2) do not apply.

(2) The requirements that may be dispensed with under this section are—

(a) the requirements of—

(i) section 207E,

(ii) section 207F,

(iii) section 207G, and

(iv) section 207J; and

(b) the requirements of section 207H so far as relating to any document required to be drawn up under the provisions mentioned in paragraph (a)(i), (ii) or (iii).

(3) For the purposes of this section—

(a) the members, or holders of other securities, of a company; and

(b) whether shares or other securities carry a right to vote in general meetings of the company,

are determined as at the date of the application to the court under section 205A.

Certain requirements excluded where shareholders given proportional rights (division).

207Q.(1) This section applies in the case of a division where each of the transferee companies is a new company.

(2) If all the shares in each of the transferee companies are to be allotted to the members of the transferor company in proportion to their rights in the allotted share capital of the transferor company, the following requirements do not apply.

(3) The requirements which do not apply are—

(a) the requirements of—

(i) section 207E,

(ii) section 207F,

(iii) section 207G, and

(iv) section 207J; and

(b) the requirements of the inspection of documents pursuant to section 207H so far as relating to any document required to be drawn up under the provisions mentioned in paragraph (a)(i), (ii) or (iii).

Power of court to exclude certain requirements (division).

207R.(1) In the case of a division, the court may by order direct that—

(a) in relation to any company involved in the division, the requirements of—

(i) section 207B, and

(ii) section 207H,

do not apply; and

- (b) in relation to an existing transferee company, the circumstances in which meeting of members of transferee company not required pursuant to section 207O has effect with the omission of the first, second and third conditions specified in that section,

if the court is satisfied that the following conditions will be fulfilled in relation to that company.

- (2) The first condition is that the members of that company will have received, or will have been able to obtain free of charge, copies of the documents listed in section 207H–
 - (a) in time to examine them before the date of the first meeting of the members, or any class of members, of that company summoned for the purposes of agreeing to the scheme; or
 - (b) in the case of an existing transferee company where in the circumstances described in section 207O no meeting is held, in time to require a meeting as mentioned in subsection (4) of that section.
- (3) The second condition is that the creditors of that company will have received or will have been able to obtain free of charge copies of the draft terms in time to examine them–
 - (a) before the date of the first meeting of the members, or any class of members, of the company summoned for the purposes of agreeing to the scheme; or
 - (b) in the circumstances mentioned in subsection (2)(b), at the same time as the members of the company.
- (4) The third condition is that no prejudice would be caused to the members or creditors of the transferor company or any transferee company by making the order in question.

Expert's report and related matters

Expert's report: valuation by another person.

207S.(1) Where it appears to an expert–

- (a) that a valuation is reasonably necessary to enable him to draw up his report; and
- (b) that it is reasonable for that valuation, or part of it, to be made by, or for him to accept a valuation made by, another person who—
 - (i) appears to him to have the requisite knowledge and experience to make the valuation or that part of it, and
 - (ii) meets the independence requirement in section 207T,

he may arrange for or accept such a valuation, together with a report which will enable him to make his own report under section 206H or 207F.

- (2) Where any valuation is made by a person other than the expert himself, the latter's report must state that fact and must also—
 - (a) state the former's name and what knowledge and experience he has to carry out the valuation; and
 - (b) describe so much of the undertaking, property and liabilities as was valued by the other person, and the method used to value them, and specify the date of the valuation.

Experts and valuers : independence requirement.

207T.(1) A person meets the independence requirement for the purposes of section 206H or 207F or section 207S only if—

- (a) he is not—
 - (i) an officer or employee of any of the companies concerned in the scheme, or
 - (ii) a partner or employee of such a person, or a partnership of which such a person is a partner;

- (b) he is not—
 - (i) an officer or employee of an associated undertaking of any of the companies concerned in the scheme, or
 - (ii) a partner or employee of such a person, or a partnership of which such a person is a partner; and
- (c) there does not exist between—
 - (i) the person or an associate of his, and
 - (ii) any of the companies concerned in the scheme or an associated undertaking of such a company,

a connection of any such description as may be specified by regulations made by the Minister with responsibility for Finance.

- (2) An auditor of a company is not regarded as an officer or employee of the company for this purpose.
- (3) For the purposes of this section—
 - (a) the “companies concerned in the scheme” means every transferor and existing transferee company;
 - (b) associated undertaking”, in relation to a company, means—
 - (i) a parent undertaking or subsidiary undertaking of the company, or
 - (ii) a subsidiary undertaking of a parent undertaking of the company; and
 - (c) “associate” has the meaning given by section 207U.

Experts and valuers: meaning of “associate”.

207U.(1) This section defines “associate” for the purposes of section 207T.

- (2) In relation to an individual, “associate” means—
 - (a) that individual’s spouse or minor child or step-child;
 - (b) anybody corporate of which that individual is a director; and
 - (c) any employee or partner of that individual.
- (3) In relation to a body corporate, “associate” means—
 - (a) anybody corporate of which that body is a director;
 - (b) anybody corporate in the same group as that body; and
 - (c) any employee or partner of that body or of anybody corporate in the same group.
- (4) In relation to a partnership that is a legal person under the law by which it is governed, “associate” means—
 - (a) any body corporate of which that partnership is a director;
 - (b) any employee of or partner in that partnership; and
 - (c) any person who is an associate of a partner in that partnership.
- (5) In relation to a partnership that is not a legal person under the law by which it is governed, “associate” means any person who is an associate of any of the partners.
- (6) In this section, in relation to a limited liability partnership, for “director” read “member”.

Powers of the court

Power of court to summon meeting of members or creditors of existing transferee company.

207V.(1) The court may order a meeting of—

- (a) the members of an existing transferee company, or any class of them; or
- (b) the creditors of an existing transferee company, or any class of them,

to be summoned in such manner as the court directs.

(2) An application for such an order may be made by—

- (a) the company concerned;
- (b) a member or creditor of the company;
- (c) if the company is being wound up, the liquidator; or
- (d) if the company is in administration, the administrator.

Court to fix date for transfer of undertaking etc of transferor company.

207W.(1) Where the court sanctions the compromise or arrangement, it must—

- (a) in the order sanctioning the compromise or arrangement; or
- (b) in a subsequent order under section 205E,

fix a date on which the transfer, or transfers, to the transferee company, or transferee companies, of the undertaking, property and liabilities of the transferor company is or are to take place.

- (2) Any such order that provides for the dissolution of the transferor company must fix the same date for the dissolution.
- (3) If it is necessary for the transferor company to take steps to ensure that the undertaking, property and liabilities are fully transferred, the court must fix a date, not later than six months after the date fixed under subsection (1), by which such steps must be taken.
- (4) In that case, the court may postpone the dissolution of the transferor company until that date.
- (5) The court may postpone or further postpone the date fixed under subsection (3) if it is satisfied that the steps mentioned cannot be completed by the date, or latest date, fixed under that subsection.
- (6) A company in relation to which an order is made by the court under this section must cause a copy of the order to be delivered to the Registrar within seven days after its making

Liability of transferee companies

Liability of transferee companies for each other's defaults.

- 207X.(1) In the case of a division, each transferee company is jointly and severally liable for any liability transferred to any other transferee company under the scheme to the extent that the other company has made default in satisfying that liability.
- (2) Subsection (1) is subject to subsections (3) to (5).
 - (3) If a majority in number representing 75% in value of the creditors or any class of creditors of the transferor company, present and voting either in person or by proxy at a meeting summoned for the purposes of agreeing to the scheme, so agree, subsection (1) does not apply in relation to the liabilities owed to the creditors or that class of creditors.
 - (4) A transferee company is not liable under this section for an amount greater than the net value transferred to it under the scheme.

- (5) In this section, the “net value transferred” is the value at the time of the transfer of the property transferred to it under the scheme less the amount at that date of the liabilities so transferred.

Disruption of websites

Disregard of website failures beyond control of company.

207Y.(1) A failure to make information or a document available on the website throughout a period specified in any of the provisions mentioned in subsection (2) is to be disregarded if—

- (a) it is made available on the website for part of that period; and
- (b) the failure to make it available throughout that period is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

(2) The provisions referred to above are—

- (a) section 206E(6);
- (b) section 206K(4);
- (c) section 206R(5) and (8);
- (d) section 206S(5) and (8);
- (e) section 206T(4) and (7);
- (f) section 207C(6);
- (g) section 207I(4);
- (h) section 207N(5) and (8); and
- (i) section 207O(4) and (7).

Interpretation

Meaning of “liabilities” and “property”.

207Z. In this Part–

“liabilities” includes duties;

“property” includes property, rights and powers of every description.”.

Repeal of Schedule 16.

5. The Companies Act is amended by repealing Schedule 16.

Savings and transitional provisions.

6. An act undertaken pursuant to the provisions of Schedule 16 of the Companies Act shall be deemed to have been done under its equivalent or nearest equivalent provision in Part IVA of the Companies Act.

Dated 8th March, 2012.

F R PICARDO,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations amend the Companies Act for the purpose of transposing into the law of Gibraltar Articles 1, 2 and 3 of Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009 amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions.

